

THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended**

AND

IN THE MATTER OF

**GUANG HUI (KEVIN) LU
(171845)**

AND

**KEVIN LU PERSONAL REAL ESTATE CORPORATION
(171845PC)**

CONSENT ORDER

RESPONDENT: Guang Hui (Kevin) Lu, Representative, Royal Pacific Realty Corp.

Kevin Lu Personal Real Estate Corporation

DATE OF REVIEW MEETING: March 7, 2018

DATE OF CONSENT ORDER: May 28, 2018

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C.
S. Sidhu
L. Lyster

ALSO PRESENT: G. Thiele, Director, Legal Services
Jennifer Clee, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On March 7, 2018, a Consent Order Proposal (“COP”) submitted by Guang Hui (Kevin) Lu , on his own behalf and on behalf of Kevin Lu Personal Real Estate Corporation was considered by the Consent Order Review Committee (the “Committee”) but not accepted. On April 13, 2018, a revised COP acceptable to the Committee was submitted by Guang Hui (Kevin) Lu , on his own behalf and on behalf of Kevin Lu Personal Real Estate Corporation.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Guang Hui (Kevin) Lu .

NOW THEREFORE, the Committee having made the findings proposed in the attached COP, and in particular having found that Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (RESA), orders that:

1. Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation be reprimanded;
2. Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$3,500.00 within ninety (90) days of the date of this Order;
3. Guang Hui (Kevin) Lu , at his own expense, shall register for and successfully complete *Real Estate Trading Services* Remedial Education Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council;
4. Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation's licenses shall include a condition requiring enhanced supervision by a managing broker for a period of not less than 12 months commencing within 30 days from the commencement of this Consent Order, as more particularly described in Schedule 1 to this Order.
5. Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount \$1,500.00 within sixty (60) days from the date of this Order.
6. In one full year from the date of this Order, Guang Hui (Kevin) Lu will, at his own expense, submit to an audit of his practice by the Council.

If Guang Hui (Kevin) Lu or Kevin Lu Personal Real Estate Corporation fails to comply with any term of this Order, the Council may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 28th day of May, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



R. Holmes, Q.C., Chair
Consent Order Review Committee

Attch.

Schedule 1

- 1) Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation's licence will be restricted to current brokerage, or another brokerage acceptable to Council (the "Brokerage"), for a period of not less than twelve (12) months.
- 2) Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation will be subject to enhanced supervision by their managing broker, as set out in these conditions, for a period of not less than twelve (12) months (the "Enhanced Supervision Period").
- 3) Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation must remain under the direct supervision of current managing broker, the managing broker of the Brokerage, or a successor managing broker acceptable to the Council (the "Managing Broker"), during the Enhanced Supervision Period.
- 4) Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation must keep the Managing Broker informed on a timely basis of the real estate services that they are providing and other activities they are engaging in and must consult with the Managing Broker in advance of taking any action regarding any questions or concerns they may have regarding compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation and the Brokerage's policies and procedures.
- 5) Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation must report all their transactions to the Brokerage promptly, and ensure that no such transactions are conducted outside the Brokerage.
- 6) Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation must ensure that all documents relevant to each transaction are provided to the Brokerage and contained in the deal file, including the contract of purchase and sale, all offers received for the listing, assignment agreements, addendums, trade records sheets, disclosure statements, releases and other pertinent information.
- 7) The Managing Broker must provide a final report to the Council confirming that:
 - a. Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation's real estate services have been conducted under their direct supervision;
 - b. Guang Hui (Kevin) Lu and Kevin Lu Personal Real Estate Corporation's activities have been carried out competently and in compliance with the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, and in accordance with Brokerage's policies and procedures;
 - c. they have reviewed all documents signed by Guang Hui (Kevin) Lu's clients and that all documents relevant to the transaction have been provided to the client and are contained in the trade records file; and

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- d. the number of real estate transactions that Guang Hui (Kevin) Lu has conducted and details regarding the client(s), the agency offered; and any customer relationships.
- 8) The Report will be reviewed by the Chair of the Council, who will determine if the requirement for enhanced supervision for the period set by Council has been met, and if not, will so advise the Managing Broker and Guang Hui (Kevin) Lu and Guang Hui (Kevin) Lu may elect to:
 - a. continue with enhanced supervision until the Chair of the Council is satisfied by further evidence that the required period and purpose of enhanced supervision has been met; or
 - b. have his licence suspended until a further order is made by the Council under section 43(4) or (5) of the RESA.
 - 9) The Managing Broker must immediately report to the Council anything of an adverse nature with respect to Guang Hui (Kevin) Lu's real estate services, including failure on his part to observe the requirements of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation, complaints received by the Brokerage, the nature of the complaint and the parties, and how it was resolved.
 - 10) The Managing Broker must ensure that Guang Hui (Kevin) Lu and his unlicensed or licensed assistants, if any, receive adequate, appropriate and ongoing training with respect to their obligations under the RESA, Regulations, Bylaws, and Rules, and in accordance with the Brokerage's policies and procedures.
 - 11) The Managing Broker must be provided with a copy of these conditions and, prior to the commencement of the Enhanced Supervision Period, must confirm in writing to the Council that they have read these conditions, are aware of their duties under these conditions, and agree to accept those duties. Any acceptable successor managing broker will also be provided with a copy of these conditions and must provide the same confirmation within 14 days of assuming the Managing Broker's duties.
 - 12) If for any reason the Managing Broker is unable to perform any of the duties imposed herein, they must immediately advise Council of this inability.
 - 13) If the Managing Broker is unable or unwilling to perform any of these duties and/or fails to meet their obligations under these conditions, Guang Hui (Kevin) Lu's licence is suspended and will remain suspended until all conditions herein are met or a further order is made by Council under section 43(4) or (5) of the RESA. Any suspension of Guang Hui (Kevin) Lu's licence under this paragraph does not limit the Council's ability to take further disciplinary action for breach of the conditions or of the RESA, the Regulations, the Bylaws, the Rules and all other applicable legislation.

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**GUANG HUI (KEVIN) LU
(171845)**

AND

**KEVIN LU PERSONAL REAL ESTATE CORPORATION
(171845PC)**

CONSENT ORDER PROPOSAL BY GUANG HUI (KEVIN) LU AND KEVIN LU PERSONAL REAL ESTATE CORPORATION

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Guang Hui (Kevin) Lu ("Mr. Lu") and Kevin Lu Personal Real Estate Corporation to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Service Act* ("RESA").

For the purposes of the Proposal, Mr. Lu, Kevin Lu Personal Real Estate Corporation and the Council have agreed upon the following facts:

1. Mr. Lu (**171845**), has been licensed as a representative since September 30, 2015.
2. Mr. Lu was at all relevant times licensed as a representative with Metro Edge Holdings Ltd. dba Metro Edge Realty ("Metro Edge Realty").
3. Kevin Lu Personal Real Estate Corporation (**171845PC**) was licensed February 15, 2017.
4. On March 21, 2016, Mr. Lu acted as the buyer's agent in regard to the buyer's purchase of residential property located at [REDACTED] Surrey, B.C. (the "Property"). The contract of purchase and sale between the buyer and the seller of the Property (the "Contract") contained the following terms:

Price:	\$1,480,000
Deposit:	\$74,000 within 24 hours of subject removal
Subjects:	inspection: to be removed by March 24
Completion:	June 27, 2016

Possession: June 30, 2016
Buyer's Agent: [REDACTED] Metro Edge Realty
Seller's Agent: [REDACTED] Bay Realty

5. Mr. Lu drafted the subject to inspection condition in the Contract as follows:

"1-inspection
that will be done within three days after acceptance of this offer ..."
6. The Seller added to the Contract "Inspection condition is to be removed on or before March 24, 2016, 6 p.m. This condition is for the sole benefit of the Seller." The buyer and seller both initialed the change.
7. On March 23, 2016, the buyer's inspection took place, after which the buyer requested a \$3,000 price reduction. The Seller offered to leave additional appliances in lieu of the price reduction, but ultimately accepted the price reduction.
8. On March 24, 2016, Mr. Lu prepared the Removal of Subject to Clause form to state: "INSPECTION". The seller added the words "Subject has been removed."
9. On March 25, 2016, the buyer's deposit was due. As it was a bank holiday, the seller agreed to extend the due date for the deposit by one day.
10. On March 26, 2016, the buyer obtained a bank draft for the deposit. As March 26, 2016 was a Saturday, the bank draft was dated for the next business day, March 28, 2016.
11. Mr. Lu provided Ms. D [REDACTED] with a copy of the buyer's bank draft on March 26, 2016.
12. Mr. Lu did not deliver the buyer's deposit to Metro Edge Realty upon his receipt of the bank draft on March 26, 2016, but instead delivered the bank draft to Metro Edge Realty on May 6, 2016 (over six weeks after it was due), when it was deposited into Metro Edge Realty's trust account.
13. Mr. Lu also failed to deliver all trading records for the transaction to Metro Edge Realty promptly, not providing the records to Metro Edge until sometime in early May 2016.
14. On May 13, 2016 Mr. Lu advised Ms. [REDACTED] that he had provided the transaction documents, including the deposit, to his brokerage late, and that he required the seller to sign a Late Deposit Form. Mr. Lu did not advise his managing broker that the deposit was late.
15. After being advised by [REDACTED] Ms. [REDACTED]'s partner, to seek legal advice, the seller signed the Late Deposit Form. The buyer and Mr. Lu also signed the Late Deposit Form.
16. On June 27, 2016, the sale completed.

17. On July 20, 2016, the Council received a complaint from the seller of the Property concerning Mr. Lu's lack of professionalism in the drafting of the Contract of Purchase and Sale and regarding the late delivery of the deposit.
18. In the course of its investigation into the seller's complaint, the Council's staff noted that Mr. Lu used Metro Edge Realty's address for the buyer's address on the FINTRAC client information record. Mr. Lu advised the Council that he used this address as his client was a new immigrant and was staying in a motel.
19. Mr. Lu advised the Council in his response that he had worked as a licensee in Quebec for seven years, and in Alberta for one year, and while working in those jurisdictions he handed in the transaction documents to his brokerage three weeks before completion. However, the legislation in Quebec and in Alberta requires licensees to submit records to their brokerage without delay.
20. A Notice of Disciplinary Hearing was issued on November 16, 2017 and served on Mr. Lu.
21. Mr. Lu has no prior disciplinary history with the Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Mr. Lu, on his own behalf and on behalf of Kevin Lu Personal Real Estate Corporation, proposes the following findings of misconduct be made by the CORC:

Mr. Lu committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, in his capacity as the buyer's agent in the purchase of residential property located at [REDACTED] Street, Surrey, BC (the "Property"), he:

1. contrary to sections 3-4 [duty to act with reasonable care and skill] and 3-3(a) [duty to act in the best interest of the client] of the Rules, failed to properly draft a 'subject to inspection' condition which reflected:
 - (a) that the property would be inspected by a professional home inspector, and that the buyer would be satisfied with that inspection;
 - (b) the date and time by which the subject condition had to be removed; and
 - (c) that the condition was for the benefit of the buyer.
2. contrary to section 27(1)(a) of the RESA [prompt payment of monies into trust] and sections 3-3(a) and 3-4 of the Rules, failed to promptly deliver the buyer's deposit to Metro Edge Realty on March 26, 2016, the date he received the deposit, or, alternatively, by March 28, 2016, the first business day following his receipt of the deposit; and instead, provided the deposit to Metro Edge Realty on May 6, 2016, which was over 6 weeks after he had received the deposit; and

3. contrary to section 3-2(1)(b) [duty to promptly deliver trading records to managing broker] of the Rules, delivered the contract of purchase and sale and other transaction documents to his managing broker on May 28, 2016, which was two months after the buyer had removed the 'subject to inspection' condition.

PROPOSED ORDERS

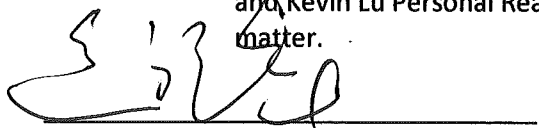
Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Lu, on his own behalf and on behalf of Kevin Lu Personal Real Estate Corporation, proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Mr. Lu and Kevin Lu Personal Real Estate Corporation each be reprimanded.
2. Mr. Lu and Kevin Lu Personal Real Estate Corporation pay a discipline penalty to the Council in the amount of \$3,500.00 within ninety (90) days of the date of this Order.
3. Mr. Lu, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council.
4. Mr. Lu's and Kevin Lu Personal Real Estate Corporation's licences include a condition requiring enhanced supervision by a managing broker for a period of not less than 12 months commencing within 30 days from the commencement of this Consent Order, as more particularly described in Schedule 1 to this Order.
5. Mr. Lu and Kevin Lu Personal Real Estate Corporation pay enforcement expenses in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
6. In one full year from the date of this Order, Mr. Lu will, at his own expense, submit to an audit of his practice by the Council.
7. If Mr. Lu and Kevin Lu Personal Real Estate Corporation fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Lu's and Kevin Lu Personal Real Estate Corporation's licences without further notice to Mr. Lu and Kevin Lu Personal Real Estate Corporation.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Lu and Kevin Lu Personal Real Estate Corporation acknowledge and understand that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.


2. Mr. Lu and Kevin Lu Personal Real Estate Corporation acknowledge that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the CORC; and, that they have obtained independent legal advice or have chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. Lu and Kevin Lu Personal Real Estate Corporation acknowledge and are aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council's website, on CanLII, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.
4. Mr. Lu and Kevin Lu Personal Real Estate Corporation acknowledge and are aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including any Consent Order made by the Council in relation to this matter.
5. Mr. Lu and Kevin Lu Personal Real Estate Corporation hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Lu and Kevin Lu Personal Real Estate Corporation for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Mr. Lu and Kevin Lu Personal Real Estate Corporation in any civil proceeding with respect to the matter.



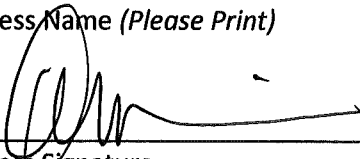
GUANG HUI (KEVIN) LU on his own behalf and on behalf of Kevin Lu Personal Real Estate Corporation

Dated 13, day of April, 2018

Signature of Guang Hui (Kevin) Lu witnessed on the above date by:



Witness Name (Please Print)



Witness Signature